order of the court in any case extends the time for removal, and *Spangler* v. *Railroad Co.* (C. C.), 42 Fed. 305, was expressly disapproved. Simonton, J., discussed the question both on the authorities and on reason, and, taking the test of time in the act of Congress when the defendant is 'required' to present his defense to be when he will be in default for not doing so, drew the conclusion very forcibly that he was not in default so long as his time to answer continued to run in the State court, whether under the general provisions of a statute or the special order of the court. In *Chiatovich* v. *Hanchett* (C. C. D. Nev. 1897), 78 Fed. 193, it was said that it was 'the settled law and practice of the United States circuit courts that an extension of time to answer by order of court, whether made on stipulation or not, extends the time for removal'; citing *Rycroft* v. *Green* (C. C.), 49 Fed. 177; *Phoenix Ins. Co.* v. *Charleston Bridge Co.*, 13 C. C. A. 58, 65 Fed. 628; *Price* v. *Railroad Co.* (C. C.), 65 Fed. 825; *Garrard* v. *Silver Peak Mines*, 76 Fed. 1. The court then advanced one step further, and held that an agreement had the same effect although no order of court had been obtained on it. And the same result was reached in the latest case to which our attention has been directed. *Mayer* v. *Railroad Co.* (C. C. S. D. N. Y. 1899), 93 Fed. 601, overruling the previous case of *Schipper* v. *Cordage Co.*, 72 Fed. 803, cited *supra*, in the same court. See, also, *People's Bank* v. *Etna Ins. Co.* (C. C. S. D. S. C. 1893), 53 Fed. 161; *McKeen* v. *Ives* (C. C. D. Ind. 1888), 35 Fed. 801; *Lockhart* v. *Railroad Co.* (C. C. W. D. Tenn. 1889), 38 Fed. 274; *Winberg* v. *Lumber Co.* (C. C. S. D. N. Y. 1887), 29 Fed. 721; and *Allmark* v. *Steamship Co.* (C. C. E. D. N. Y. 1896), 76 Fed. 614—in which Benedict, J., after holding that a stipulation extending the time to answer, to which the judge assented though no order to that effect was signed, extended the time for removal, added, 'But, if this were otherwise, I am of the opinion that, under the circumstances above stated, the plaintiff should not be heard in this court to say that the time to answer had expired.' "

There being no decision by the Supreme Court of the United States or the Federal courts of Pennsylvania to control the court, it felt that it was left to reach its own conclusions as to the language and intent of the act. That conclusion was a unanimous one in favor of the affirmative of the proposition above stated—namely, that an agreement between parties to extend the time for filing an affidavit of defense extended the date for removal and is valid and enforceable, and that a petition for removal filed within the limits of such an agreement is accordingly in time.

It was further held that no notice of an application to remove a cause to a Federal court is necessary. Citing *Chiatovich* v. *Hanchett*, *supra*.

RAILROADS—ACQUISITION OF RIGHT OF WAY BY ADVERSE POSSESSION.—Where a railroad track was permanently laid on land without condemnation proceedings, or contract with or license from the owner, and so remained and was used for the purposes of the road for the statutory period, all the elements of adverse possession existing, *Held*, that such possession by the road, like an original and tortious possession by an individual, ripens into title by limitation, whether the true owner actually saw or knew of the possession, or not. *Boyce* v. *Mo. Pac. R. Co.* (Mo.), 68 S. W. 920.

The opinion, by Marshall, J., contains a review of the authorities pertinent to the theory adopted by the court—that of a lost grant. The court says, in part:

"Originally, in England, easements were said to lie wholly in grant. Easements are incorporeal hereditaments, and statutes of limitations were held to apply only to actions for the recovery of land. Afterwards the fiction of a 'lost grant' was adopted by the courts; that is, the courts presumed from the long possession and exercise of right by the defendant with the acquiescence of the owner, that there must have been originally a grant by the owner to the claimant, which had become lost. 'It was called a "lost grant," not to indicate that the fact of the existence of the grant originally was of importance, but to avoid the rule of pleading requiring profert.' *Railroad Co.* v. *McFarlan*, 43 N. J. Law, 605. It was considered the duty of the court to enforce the fiction, 'not, however, because either the court or the jury believe the presumed grant to have been actually made, but because public policy and convenience require that long-continued possession shall not be disturbed.' Jones, Easem. sec. 161, p. 138. Pollock, B., in the recent case of *Bass* v. *Gregory*, 25 Q. B. Div. 481, decided in 1890, said the fiction of lost grant 'has been adopted by almost all civilized nations for the furtherance of justice and the sake of peace.' Formerly it was held to apply only to cases where the defendant claimed a right to possession by prescription; that is, that his right began at a period beyond the 'time whereof the memory of man runneth not to the contrary.'

"Lately in England and in most of the United States the rule has been adopted that the period for acquiring an easement in lands corresponds to the local statute of limitations as to land. For it was said, 'It would be irrational to hold that an easement may not be acquired by the same lapse of time required to confer title to the land by adverse possession.' Jones, Easem., sec. 160, p. 134, and cases cited in notes. And this is the doctrine ably announced by Ellison, J., speaking for the Kansas City court of appeals in *House* v. *Montgomery*, 19 Mo. App., loc. cit. 179, after an exhaustive review of the modern authorities. Hence while statutes of limitations do not directly apply to actions in which easements or other incorporeal hereditaments are involved, still by judicial construction an adverse user of an easement for the period specified in the statute, barring actions for the recovery of lands, is now by analogy held to be a conclusive judicial presumption of a prescriptive right by a lost grant. Jones, Easem., secs. 161, 162, and cases cited; 10 Am. & Eng. Enc. Law (2d Ed.) p. 426, and cases cited. It is the accepted rule, however, that 'the user, to perfect title by prescription to an easement, must be exercised by the owner of the dominant tenement, and must be open, peaceable, continuous, and as of right.' *Illinois Cent. R. Co.* v. *City of Bloomington*, 167 Ill. 9, 47 N. E. 318; *Conyers* v. *Scott*, 94 Ky. 123, 21 S. W. 530; *Swan* v. *Munch*, 65 Minn. 500, 67 N. W. 1022, 35 L. R. A. 743, 60 Am. St. Rep. 491; *Hoyt* v. *Carter*, 16 Barb. 212; *Bushey* v. *Santiff*, 86 Hun, 384, 33 N. Y. Supp. 473; *Costello* v. *Harris*, 162 Pa. 397, 29 Atl. 874. This doctrine was recognized by this court in *Pitzman* v. *Boyce*, 111 Mo. 387, 19 S. W. 1104, 33 Am. St. Rep. 536, and it was there said: 'And such adverse user for the statutory period will give origin to the rebuttable legal presumption of a grant, even though the use, in its inception, was a trespass.'

"But it was not meant by this that the legal presumption of a grant could be rebutted or overcome by proof that the owner of the fee—the servient estate—had no actual knowledge of the claim to an easement, and did not expressly acquiesce in the dominant use. It was only intended that the presumption could be rebutted by showing that the use was by express permission, or that the owner of the servient estate was under a legal disability, and could not, therefore, give consent or legal acquiescence, or, in other words, by the interposition of any of the excusatory pleas that are open to a plaintiff in ejectment against a plea by the defendant of the statute of limitations. So that although, technically, the statute of limitations does not apply to an easement, still by judicial interpretation the result is the same as if the statute did so apply. Under the first contention the plaintiff asserts the subcontention that the burden is upon the defendant to show that such exercise of such an easement was with the knowledge and acquiescence of the owner, and that in this case, so far from the defendant so proving, it appears that Mary E. Boyce did not know that the tracks were on the land until 1890, and John O'Fallon Delaney did not know that fact until 1895. Theoretically the use and easement are with the knowledge and acquiescence of the owner as much as is the adverse possession of a defendant in ejectment. For the law presumes that every man knows the condition and status of his land, and if anyone ousts him, or trespasses upon his land, or enters into possession and sets up an adverse claim thereto, and the owner does not ask legal aid to dispossess him within the time limited for bringing such actions, the law assumes that the owner has acquiesced in the adverse claim. That is, the statute of limitations sets at rest all such questions unless they are properly presented for adjudication within the statutory period of limitation. In point of fact, the owner, like these owners, may have had no actual knowledge, and therefore did not expressly acquiesce; but the law implies knowledge, and therefore consent. This is as true of claims to easements as it is to claims to the land itself. 10 Am. & Eng. Enc. Law, p. 426."

STREET RAILWAYS—PRINCIPAL AND AGENT—ASSAULT BY AGENT—SCOPE OF AUTHORITY.—The plaintiff while a passenger on defendant's street car, and in a state of intoxication, grossly insulted the motorman. After reaching his destination, the plaintiff alighted from the car, deposited his bundles on the sidewalk, and returning to the car, got into an altercation with the motorman. The motorman descended from the car and struck him over the head with an iron lever used for controlling the car. *Held*, that the assault was not within the scope of the motorman's employment, and the defendant company was not liable for damages for the injury.—*Palmer* v. *Winston &c. Co.* (N. C.), 42 S. E. 604 (Nov., 1902).

The decision seems based on sound principles. The opinion by Clark, J., is brief but luminous. On this point the court says:

"The only question which remains is as to the liability of the defendant for the assault upon the plaintiff. If the plaintiff had been a passenger, or his passage had not been fully terminated, or if, when he left the car at his destination, the employe had immediately followed the passenger up and assaulted him, the defendant concedes that there would be no question as to the liability of the company. *Daniel* v. *Railroad Co.*, 117 N. C. 592, 23 S. E. 327; *Williams* v. *Gill*, 122 N. C. 967, 29 S. E. 879; *Strother* v. *Railroad Co.*, 123 N. C. 197, 31 S. E. 386.